

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 201 OF 2010

Dated this the 9th day of June, 2011

CORAM:

**HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER
HON'BLE Dr.K.B SURESH, JUDICIAL MEMBER**

1. V.E Jossie
MCM(AE), NAY
Navalbase, Kochi – 682 004
2. K.Vijayakumar
USL, MO(K), Naval Base
Kochi – 682 004.
3. B.Vasudevan Unni
A/M-1, Naval Armament Depot
N.A.D, Aluva.
4. The Sasidharan Nair
Secretary
Cochin Naval Base Civilian Workers' Union
3rd Floor, Pegees Mall, Pallimukku, Ernakulam
5. K.Balakrishnan
General Secretary
NAD Employees Union, Aluva
Ernakulam

Applicants

(By Advocate Mr. Sujin S)

Versus

1. The Flag Officer Commanding in chief
Head Quarters, Southern Naval Commanding
Naval Base, Kochi – 04
2. Union of India represented by
Secretary, Ministry of Defence
New Delhi

(By Advocate Mr Sunil Jacob Jose, SCGSC)

The application having been heard on 16.02.2011, the Tribunal delivered the following:

ORDER

HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER

1. The applicants have filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

“ a) For quashing the Office Memorandum Annexure A-1 dated 23.07.2009 issued by the second respondent and the consequent Annexure A-4 memorandum dated 12.11.2009 issued by the first respondent as illegal and void and

b) For a direction to the respondent to include House Rent Allowance, City compensatory allowance, travelling allowance etc and all other admissible in conformity with section 59 of the Factories Act, 1948 for the purpose of calculating overtime allowance. ”

2. The first, second and third applicants are employees and the fourth and fifth applicants are office bearers of registered and recognized unions representing various categories of employees in the establishment of the first respondent. The applicants have averred that all along they have received overtime allowance which was computed by including all allowances like House Rent Allowance (HRA), City Compensatory Allowance (CCA), Transport Allowance (TA), Small Family Norm Allowance (SFA) etc. This has been done under the provisions of Rule 59(2) of Factories Act, 1948. While so, the second respondent issued Annexure A-1 impugned order dated 23.07.2009, which instructed the first respondent to exclude HRA, TA and SFA for the purpose of computing the overtime allowance under the Factories Act, 1948.



The applicants affirm that these instructions are contrary to the Sub-section 2 of Section 59 of the Factories Act. The said provision has been interpreted by the courts to mean that ordinary wages include all allowances. Annexure A-1 impugned order was challenged before the Madras Bench of the Hon'ble C.A.T and it has passed an order staying the same (Annexure A-3).

3. However, the first respondent, vide Annexure A-4, has instructed all the Commanding Officers, Head of Departments of Units, Establishment under SNC to regulate the OTA bills in accordance with Annexure A-1 order. The applicants state that the action of the respondents in excluding certain allowances like HRA, TA, SFA etc is arbitrary, illegal, unsustainable and it is contrary to the provisions contained under Section 59(2) of the Factories Act 1948.

4. The respondents filed reply statement contesting the claim of the applicants. They submitted that they have acted only in accordance with the orders of the Ministry of Labour and Employment vide their OM No.2-16025/81/2007-ISH II dated 19th November 2007. According to the said OM the wages are remuneration for work, while the HRA, TA etc are compensatory allowances and hence may not be taken into account for calculating Overtime Allowance (OTA) under Factories Act 1948. This O.M was circulated by Ministry of Defence vide O.M F.No.14/1/2000-D(Civ-II) dated 26 March 2008. The respondents added that Sub-section (1) of Section 59 states that a worker shall be entitled to wage at the rate of twice his ordinary rate of wages in respect of overtime work. Sub Section (2) of

A handwritten signature or mark, appearing to be 'D.Y.', is located at the bottom of the page.

Section 59 clarifies that "ordinary rate of wages means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work". Government of India, Ministry of Defence in consultation with Ministry of Labour and Employment has given clear instructions that Allowances of compensatory nature like House Rent Allowance, Transport Allowance etc are to be excluded for the purpose of computing overtime allowance under the Factories Act 1948. The respondents have communicated the above directives of Govt of India, to all the field units for guidance and compliance.

5. Heard the counsel on both sides and perused the documents. The applicants produced Annexure MA 1 order of the Ministry of Railways on grant of overtime allowances consequent upon revision of pay scales and allowances, on implementation VI CPC report.

"2. The emoluments, for the purpose of computation of rates of OTA will comprise the following:-

a) Railway employees governed by Factories Act

- Basic Pay (Pay in Pay Band + Grade Pay)
- Dearness Allowance
- House Rent Allowance
- Transport Allowance
- Cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles, as the worker is for the time being entitled to (excluding wages for Overtime work or Bonus)

b) Railway employees governed by HOER

All the items as shown in (a) above except House Rent Allowances

DY

c) Railway employees governed by rules Under
Departmental Overtime

(i) Employees working in Loco Sheds and C & W Depot
All the items as shown in (a) above except House
Rent Allowance

(ii) Other Railway employees governed under
Departmental Orders
Basic Pay (Pay in Pay Band + Grade Pay)
Dearness Allowance

3. The revised rates of Overtime Allowance shall be
effective from 01.09.2008.

6. In accordance with Factory Act, 1948, an establishment where a process of manufacturing goes on is governed by Factories Act. Possibly, the Railway Authorities continued the practice followed hitherto of including all allowances for the purpose of computing OTA. Whether, it was in ignorance of OM No. 2-16025/81/2007-Estt. Dated 19.11.2007 of the Ministry of Labour or in spite of it, was not made known to us.

In the meanwhile, Madras Bench disposed of a batch of Original Applications Nos. 1143, 1144, 1132, 1157, 1170, 1214 & 1266 of 2009 and 1113 to 1115 and 631 of 2010 filed by Avadi Engine Factory Employees Union and others Vs Chairman, Ordnance Factories Board & Ors., dealing with the same issue. The interim order staying the operation of the impugned order of the respondents applicants in O.A. No.1132/2009 was produced by the applicants as Annexure A-3. During the pendency of this O.A, the order in O.A. No. 1132/2009 and the batch cases supra was pronounced by the Madras Bench on 24.12.2010. The relevant para is extracted below:-

"6. A perusal of the above would make it clear that the expression 'ordinary rate of wages' does not include anything beyond the basic pay and the allowances that the workers are time being entitled to. The above

DY

provision also makes it clear that in respect of over time work, an employee is entitled to the wages @ twice of his ordinary rate of wages. When a specific clarification is made in provision 2 of Section 59, about the terms "ordinary rate of wages", the applicants cannot contend that the allowances include HRA, TA and other allowances. We do not see any reason to hold that the term of 'allowance' includes all allowances, viz., HRA, TA, etc. which is not the intention of the legislature while incorporating the relevant provisions.

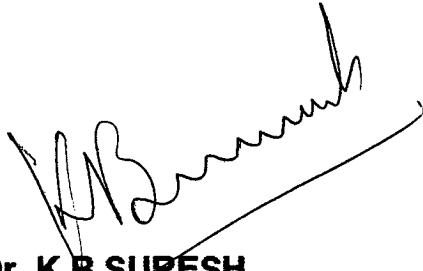
7. For the reasons stated above, all these applications are dismissed. However, there will be no order as to costs."

Therefore, we follow the order of the Madras Bench of the Tribunal and hold this O.A. as devoid of merits and dismiss the same. No costs.

Since the original Application has been disposed of and. M.A 953/10 be. become infructuous.

(Dated this the 31st day of June 2011)

MA 30/11


Dr. K.B SURESH
JUDICIAL MEMBER


K. NOORJEHAN
ADMINISTRATIVE MEMBER

SV